

Message Text

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ACTION NEA-11

INFO OCT-01 EUR-12 ISO-00 NEAE-00 L-03 SSO-00 INRE-00

NSCE-00 ICAE-00 DOEE-00 SOE-02 AID-05 CEA-01

CIAE-00 COME-00 DODE-00 EB-08 DOE-15 H-01 INR-10

INT-05 NSAE-00 OMB-01 PM-05 OES-07 SP-02 SS-15

STR-07 TRSE-00 ACDA-12 /123 W

-----087698 231326Z /47

O R 231225Z MAY 78 ZFF-4

FM AMEMBASSY ABU DHABI

TO SECSTATE WASHDC NIACT IMMEDIATE 7871

AMEMBASSY TEHRAN NIACT IMMEDIATE

INFO AMEMBASSY JIDDA

AMEMBASSY KUWAIT

AMEMBASSY LONDON

AMEMBASSY MANAMA

AMEMBASSY MUSCAT

CONFIDENTIAL AB DHABI 1470

E.O. 11652: GDS

TAGS: ENRG, EINV, TC, IR, US

SUBJECT: TAX AND ROYALTY PROBLEM FOR CRESCENT PETROLEUM

REFS: (A) STATE 130196, (B) STATE 129910, (C) TEHRAN 4805,

(D) STATE 122746

1. WE ARE PUZZLED BY ELY REPORT TO DEPARTMENT (REF A) THAT HE HAS REPORT FROM JAFFAR THAT RULER OF SHARJAH PLANS TO TAKE SOME SORT OF UNSPECIFIED BUT PRECIPITATE ACTION IN NEAR FUTURE RE HIS DISPUTE WITH CRESCENT. JAFFAR CALLED ON AMBASSADOR AND DCM AT NOON ON MAY 22 TO PROVIDE US WITH COPY OF CRESCENT LETTER OF MAY 15 RESPONDING TO THAT FROM RULER PLEADING SOVEREIGN IMMUNITY FROM ARBITRATION.

JAFFAR EXPLAINED THAT HE FEARED RULER MIGHT REPEAT MIGHT REACT NEGATIVELY TO COMPANY'S CONTINUING INSISTENCE UPON ARBITRATION BUT AGREED WITH US THAT "PRECIPITATE ACTION" NOT TOO LIKELY. JAFFAR SAID HE EXPECTED TO DELIVER LETTER TO CONFIDENTIAL

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RULER AFTERNOON OF MAY 22 OR AS SOON THEREAFTER AS APPOINTMENT COULD BE ARRANGED. UPON RECEIVING REF A, AMBASSADOR TELEPHONED JAFFAR WHO CONFIRMED THERE HAD BEEN NO REPEAT NO NEW DEVELOPMENTS SINCE YESTERDAY NOON.

2. ALTHOUGH WITHOUT INSTRUCTIONS CONTAINED REF (A), AMBASSADOR DISCUSSED TAX AND ROYALTY PROBLEM INFORMALLY WITH UAE OIL

MINISTER UTAYBA MAY 20 WHO MADE NOTES BUT INDICATED THAT FEDERAL MINISTRY HAD NO JURISDICTION OF THIS MATTER UNLESS INVITED BY SHARJAH GOVT. (MEMCON BEING POUCHED). AMBASSADOR ALSO HAD REQUESTED APPOINTMENT TO CALL ON RULER OF SHARJAH MAY 30 IN CONNECTION WITH OTHER PROPOSED CALLS IN NORTHERN EMIRATES AND JAFFAR HAD INDICATED THAT THIS TIMING WAS SATISFACTORY TO CRESCENT. HOWEVER, IN VIEW OF LATEST INSTRUCTIONS AND APPARENT UNCERTAINTY HOW RULER OF SHARJAH WILL REACT TO MAY 15 LETTER FROM CRESCENT, AMBASSADOR HAS REQUESTED AND RECEIVED APPOINTMENT TO SEE RULER AT 11 A.M. WEDNESDAY, MAY 24.

3. IN MEETING WITH SHAIKH SULTAN, AMBASSADOR WILL:

--A) URGE THAT SHARJAH NOT TAKE ANY PRECIPITATE ACTIONS IN RESPONSE TO CRESCENT'S INSISTENCE UPON PROCEEDING WITH ARBITRATION IN ABSENCE OF A NEGOTIATED SETTLEMENT;

--B) POINT OUT THAT COMPANY IS SERIOUS ABOUT ARBITRATION AND THIS IS NOT A TACTICAL MANEUVER SINCE COMPANY WOULD LOSE A GREAT DEAL IF ARBITRATION WENT AGAINST IT.

--C) STATE BASED ON OUR UNDERSTANDING OF INTERNATIONAL LAW, SHARJAH EFFECTIVELY WAIVED ITS SOVEREIGN IMMUNITY BY ACCEPTANCE OF THE ARBITRATION CLAUSE IN THE 1969 CONCESSION AGREEMENT.

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--D) SHOULD SHARJAH REJECT THE PRINCIPLE OF ARBITRATION, THE USG WOULD BE COMPELLED TO TAKE WHAT ACTION IT COULD TO SUPPORT THE INTEREST OF AMERICAN COMPANIES AS WELL AS THE PRINCIPLE OF INTERNATIONAL ARBITRATION NOTING THAT USG HAS TAKEN THIS POSITION BEFORE WITH RESPECT TO U.S. COMPANIES' INTERESTS IN LIBYA AND IN KUWAIT, AND

--E) FINALLY, THAT USG IS NOT TAKING POSITION ON MERITS OF CRESCENT'S CASE THAT IMPOSITION OF OIL TAX AND ROYALTY RETRO-ACTIVE TO JULY 1, 1976 WOULD MAKE CONCESSION UNECONOMICAL OR OF SHARJAH'S RIGHT TO SEEK A REVISION OF CONCESSION AGREEMENT. HOWEVER, USG MUST SUPPORT PRINCIPLE OF ADHERENCE BY BOTH PARTIES TO TERMS OF CONTRACT THEY FREELY ENTERED INTO INCLUDING THOSE CLAUSES SETTING FORTH ARRANGEMENTS TO RESOLVE DISPUTES THROUGH ARBITRATION SHOULD BILATERAL NEGOTIATIONS PROVE UNSUCCESSFUL.

4. ONLY IN UNLIKELY EVENT THAT SHAIKH SULTAN SHOULD INFORM AMBASSADOR THAT HE INTENDED TO NATIONALIZE CRESCENT WILL AMBASSADOR SET FORTH STANDARD USG POSITION THAT USG WOULD SEEK PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION ON BEHALF OF CRESCENT.

5. REGARDING DEPARTMENT'S REQUEST (REF B) FOR OUR COMMENTS ON TEHRAN'S DESIRE TO BE MORE CERTAIN OF OUR FACTS (REF C), ALL WE CAN SAY IS THAT WE HAVE TRIED REPORT ALL INFORMATION GIVEN TO US. NOT CLEAR TO US WHAT MORE IS REQUIRED WITHOUT GETTING INTO TECHNICALITIES OF DISPUTE. MOREOVER, AS WE HAVE ACCESS ONLY TO ONE SIDE OF DISPUTE, WE MUST RELY ON EMBASSY TEHRAN TO PROBE THINKING AND VIEWS OF GOI AND NIOC. IT IS OUR UNDERSTANDING THAT LAST TIME CRESCENT DISCUSSED ITS CASE DIRECTLY WITH NIOC WAS IN AUGUST 1977 WHEN HIGHER TAX AND ROYALTY ISSUE AROSE AGAIN. DISCUSSIONS APPARENTLY HAD SHARJAH'S APPROVAL. OUR IMPRESSION NOW IS THAT NEITHER SHARJAH NOR CRESCENT SEE ANY USE IN FURTHER DISCUSSIONS SINCE ISSUES HAVE BEEN VERY CLEARLY SET FORTH AND CRESCENT APPARENTLY IS NOT CONFIDENTIAL

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WILLING TO CONSIDER NEGOTIATIONS ON STRETCHING OUR PERIOD FOR RETROACTIVE PAYMENTS. COMPANY POSITION SEEMS CLEARLY TO BE THAT ANY RETROACTIVE PAYMENT WILL MAKE ITS ENTIRE OPERATION UNECONOMIC. CONSEQUENTLY, IF EMBASSY TEHRAN DOES NOT WISH AT ACT, SEE NO RECOURSE BUT TO TAKE LINE SET FORTH IN PARA 4 UNLESS OTHERWISE INSTRUCTED BY DEPARTMENT.

6. IF DEPARTMENT HAS ANY FURTHER THOUGHTS, SHOULD BE SENT NIACT IMMEDIATE. AMBASSADOR ETD ABU DHABI FOR SHARJHA IS MIDNIGHT EDST.

DICKMAN

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NNN

Message Attributes

Automatic Decaptoning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PETROLEUM, TAXES
Control Number: n/a
Copy: SINGLE
Draft Date: 23 may 1978
Decapton Date: 01 jan 1960
Decapton Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978ABUDH01470
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780217-0351
Format: TEL
From: ABU DHABI
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780531/aaaaazxb.tel
Line Count: 148
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: e4a60799-c288-dd11-92da-001cc4696bcc
Office: ACTION NEA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 STATE 130196, 78 STATE 129910, 78 TEHRAN 4805, 78 STATE 122746
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 10 jun 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2610989
Secure: OPEN
Status: NATIVE
Subject: TAX AND ROYALTY PROBLEM FOR CRESCENT PETROLEUM
TAGS: ENRG, EINV, TC, IR, US, CRESCENT PETROLEUM
To: STATE TEHRAN
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/e4a60799-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014